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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,221	03/29/2004	Gary W. James	METZ 2 00009	3033
27885	7590	07/17/2006	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			STERLING, AMY JO	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/812,221	<b>Applicant(s)</b> JAMES ET AL.	
	<b>Examiner</b> Amy J. Sterling	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3,7-9,13,16,17 and 26-33 is/are pending in the application.
- 4a) Of the above claim(s) 16,17 and 26-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,7-9,13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is the **Final Office Action** for application number 10/812,221 Rod Hanger Adapter, filed on 3/29/04. Claims 1, 3, 7-9, 13, 16-17, 26-33 are pending. This **Final Office Action** is in response to applicant's reply dated 5/23/06. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action.

### ***Election/Restrictions***

Newly submitted claims 26-33 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Inventions I (claims 16, 17 and 26-33) and II (claims 1, 3, 7-9, 13) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because a bracket application is a cabinet can take on many forms. The subcombination has separate utility such as holding a rod for a shelving unit that is not associated within or with a cabinet structure. The combination and the subcombination have separate particulars and utility and therefore restriction is proper.

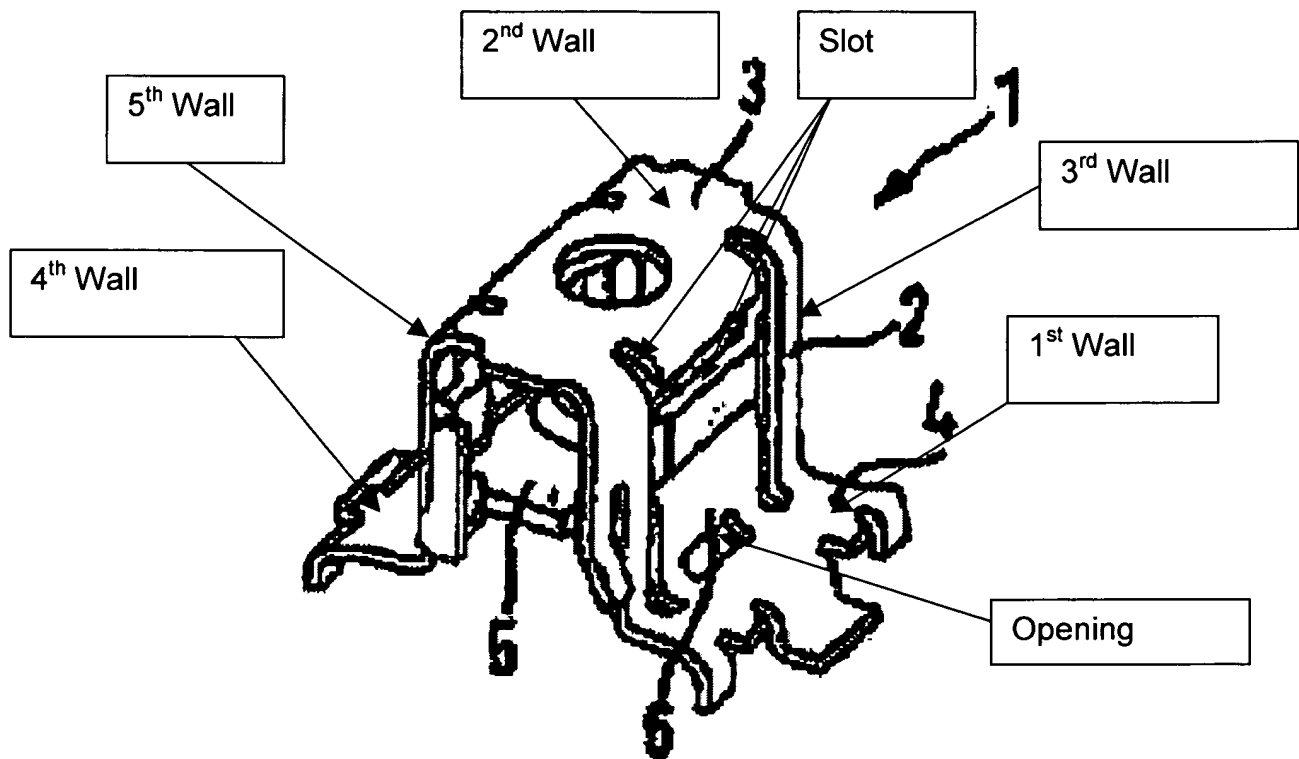
Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16, 17 and 26-33, are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 102***

Claims 1, 3 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent Publication No. 2005/0025603 to Hullman et al.

Hullman et al. teaches a device having a first wall (4) having an opening (See Drawing Below) being substantially square shaped and having an upper linear edge and being intersected by a longitudinal axis of the rod hanger adapter, a second wall (3) spaced from and at least substantially parallel and connected to the first wall, wherein the second wall includes first portion of a slot (See Drawing Below) being aligned with and intersected with the longitudinal axis of the rod hanger adapter, with a lower rounded edge, and a third wall (2) connecting the first wall (4) to the second wall (3), the third wall (2) which is substantially perpendicular to the first (4) and second walls (3) wherein a second portion of the slot is formed in the second wall extends into the third wall (2) and is aligned and intersected with by the longitudinal axis, and a fourth wall (See Drawing Below) having a notch (15) formed on a lower edge of the fourth wall, with an upper linear edge, the fourth wall which is spaced from and substantially parallel to

the second wall and a fifth wall connecting the second and fourth walls. Hullman et al. also discloses wherein a longitudinal axis of the opening is aligned with a longitudinal axis of the slot, and the longitudinal axis of the notch is aligned with a longitudinal axis of the opening.



### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent Publication No. 2005/0025603 to Hullman et al. as applied to claim 1.

Hullman et al. teaches the basic inventive concept including that the device is made of one piece, but does not specifically teach that the device is made from metal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any suitable material for making the device, metal having strength and durable properties.

### ***Response to Arguments***

The applicant has argued that the preamble should be given patentable weight.

In response to applicant's arguments, the recitations in the preamble have not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

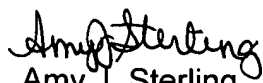
If the limitations are intended to be given patentable weight, they must be recited as positive limitations in the body of the claim.

The arguments pertaining to claim 26 is moot due to the election requirement as shown above.

***Conclusion***

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The fax machine number for the Technology center is 571-273-8300 (formal amendments) or 571-273-6823 (informal communications only). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.

  
Amy J. Sterling  
Primary Examiner  
7/11/06